

(2015) 02 JH CK 0076
In the Jharkhand High Court
Case No : L.P.A. No. 277 of 2014

Uttam Kumar Mondal

APPELLANT

Vs

Chairman, Jharkhand Academic Council and Others

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 2 JLJR 287

Hon'ble Judges : Pramath Patnaik, J.;Dhirubhai Naranbhai Patel, J.

Bench : Division Bench

Advocate : Binod Singh, for the Appellant; Ashfaque Ahmad, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dhirubhai Naranbhai Patel, J.—This Letters Patent Appeal has been preferred by the appellant (original petitioner) against the judgment and order dated 30.07.2014, whereby the writ petition being W.P. (C.) No. 2126 of 2014 preferred by him, has been dismissed by the learned Single Judge.

2. Learned counsel appearing for the appellant submitted that this appellant (original petitioner) had applied for the post of Assistant Teacher (Primary School) for which Jharkhand Academic Council is taking examination, popularly known as "TET", in which preliminary test is taken. In the said preliminary test there is Multiple Choice Questions (hereinafter referred to as MCQ). Normally these MCQs are answered by darkening the circle upon the OMR sheet. The only fault lies on the part of this appellant is that he has not darkened those circles, but, he has written either "A" or "B" or "C" or "D" which may be the correct answer of the questions asked. However, as the circles were not darkened, the OMR sheet was never examined by the machine and hence the answer sheet could not be examined by the machine. Ultimately, the result of this appellant was declared on 28.05.2013, showing his as Status- "Rejected" and the reason given is BLANK QBSE. This result is at Annexure 3 to the memo of this appeal,

which was under challenge in the writ petition.

3. Counsel for the appellant submitted that previously a writ petition was preferred by this very appellant in which a direction was given to examine the answer sheet against which Letters Patent Appeal was preferred by respondent No. 1. which was dismissed. Ultimately, a representation was directed to be decided which has been decided against this appellant and, therefore, again another writ was preferred by the appellant and as the second writ has also been dismissed, the second letters patent appeal has been preferred by the original petitioner. The main grounds adopted by the counsel for the appellant (original petitioner) are:-

(a) Though the cases of this appellant as well as one another candidate Sushma Kumari were similar, the result of Sushma Kumari has been published whereas result of this candidate has not been published.

(b) Counsel for the appellant has referred page No. 59 of the memo of the L.P.A and submitted that there are several irregularities committed by Jharkhand Academic Council and, therefore, they should tolerate the irregularities committed by this candidate, who is appellant. It is further submitted that since the candidates are tolerating the errors of JAC, the JAC should also tolerate the errors of appellant.

(c) Counsel for the appellant has relied upon the decision rendered by the Hon"ble High Court at Allahabad in Writ Petition No. 1625 of 2013 order dated 11.01.2013 (Annexure-16 to the memo of the L.P.A.).

(d) Counsel for the appellant submitted that public notice should have been given like the one, which is given by Central Board of Secondary Education about those candidates who have committed some errors in giving answer in OMR sheet. No such public notice was given in this case.

(e) Lot of malpractices and corrupt procedures are being followed by JAC and therefore, this appellant's petition should be allowed.

(f) Counsel for the appellant has also relied upon page No. 82 of the memo of this L.P.A and submitted that one similarly situated candidate who has forgotten to sign his OMR sheet, his case was allowed by JAC and, therefore, also the errors committed by this appellant should be ignored.

The aforesaid aspects of the matter has not been appreciated by the learned Single Judge and hence the judgment and order delivered by the learned Single Judge in W.P.(C) No. 2126 of 2014 dated 30.07.2014, deserves to be quashed and set aside.

4. Having heard counsel for both sides and looking to the facts and circumstances of the case we see no reason to entertain this L.P.A. mainly for the facts and reasons:

(I) This appellant (original petitioner) had preferred W.P.(C) No. 2126 of 2014,

which was dismissed by the learned Single Judge vide order dated 30.07.2014 and hence, the original petitioner has preferred this letters patent appeal.

(II) This appellant (original petitioner) had applied for the post of Assistant Teacher (Primary Education) and he has appeared in Teachers Eligibility Test (TET) Examination. This TET examination has two components, one is preliminary examination which is also known as scrutiny examination or elimination test and the candidates, who are clearing this preliminary examination, will be eligible to apply for appointment on the post of Assistant Teacher. This preliminary examination of TET examination is based upon MCQ type question.

(III) Looking to the Annexure-2 to the memo of this L.P.A., it appears that detailed instructions have been given to those candidates who are appearing in TET examination and hence this is a MCQ type examination. The candidates have to darken the circles by black/blue ball point pen only on OMR answer sheet. This was instruction No. 1 in the said booklet as is evident from Annexure-2 of the memo of this L.P.A.

(IV) It appears that this candidate has not filled up those circles while giving answers to the questions which are of MCQ type and the difficulty has started because of this. There are methods and methods of giving reply. Orthodox method of giving answers is A or B or C or D etc. This orthodox method requires manual checking of the answers. When the population of this country was comparatively lesser, the orthodox method was being followed. This orthodox method has its own hazardous. Use of Technology is a must for Jharkhand Public Service Commission. Machines can examine OMR Answer Sheet quickly and accurately. Some times examiner is also committing error because always the answer will fall within either A or B or C or D only. These two situations are the most important for the evolution of the modern method of taking examination.

(V) Always the necessity is the mother of invention. But, to avoid human errors and to have speed in declaration of the result of the examination, the modern methodology of OMR sheet has been introduced. Candidates have no option, but, to follow the modern methodology and to adopt modern methodology is a policy decision. This Court is very slow in changing policy decision while exercising writ jurisdiction under Article 226 of the Constitution of India.

(VI) The contention of the appellant appears to be is that exception may be carved out to this appellant to switch over from modern method of OMR sheet to orthodox method-writing of answer in either A or B or C or D and it may be ordered by this Court that his answer sheet may be evaluated manually which is not permissible while exercising writ jurisdiction under Article 226 of the Constitution of India. What should be the methodology of taking examination, that Jharkhand Academic Council knows better. We do not want to change this methodology. The Court has some times no expertise knowledge. There are inbuilt difficulty in the orthodox method of manual examination. Modern method

of OMR sheet-filling up of the circles by black/blue ball point pen and checking by machines all these answer sheets, equally has inbuilt benefits. Nowadays, several works are being done by computers and machines; they may be about manufacturing of items, flying of aeroplanes or taking of the examination in the thickly populated country. Jharkhand Academic Council must adopt the modern methodology.

(VII) To give answer in the OMR sheet is an art. This appellant is going to be a teacher. Prospective candidate of a post of a teacher (appellant) must follow the instruction carefully otherwise he will be a lethargic and careless teacher in future. Thus, no wrong has been committed by the Jharkhand Academic Council in rejecting the case of this appellant because instead of darkening the circles on the OMR answer sheet either he has left them blank or has written "A" or "B" or "C" or "D". Thus, this candidate has not followed the directions or instructions given by Jharkhand Academic Council and has given the answers as per his own whims and caprice and at his own peril and risk. Result and effect of the peril and risk is the rejection of his case. Nothing is so surprise and nothing is so objectionable. This is an inevitable reason of the risk taken by this candidate, who has given answers as per his own methodology.

(VIII) It should be kept in mind that the Court will never interfere in such type of eventualities, otherwise, there will be no finalization of the result because there are several candidates, who are committing such type of errors and for them the answer sheet will have to be examined manually by creating exceptions to the rules and interfering with the policy decision taken by the Jharkhand Academic Council and once the novice method of carving out exceptions by the order of the Court is started there will be no end of series of exceptions and ultimately, the said policy decision of adopting modern methodology of taking examination by Jharkhand Academic Council, will be more observed in breach than in compliance.

(IX) Learned counsel has pointed out that there is discrimination between him and the case of Sushma Kumari and has referred page No. 72 of the present compilation of the memo of L.P.A. This contention is devoid of merit mainly for the reason that the said candidate Sushma Kumari has never committed any mistake in darkening those circles of the answers of the questions on the OMR sheet. The said candidate Sushma Kumari had committed some error in darkening circles about the name of the post for which she is applying or about her candidate number etc. which is not a part and parcel of the answers. OMR sheet has two parts, one is the details of the candidates like name, candidate number, post for which candidate is applying etc. and the second part is about exact answers of the questions. If any candidate is doing any errors in giving answers, in darkening the circles on OMR sheet, the said errors cannot be termed as pardonable mistake. In fact, this is a fatal mistake. Candidate will have to loose the marks and if all blanks are left, as they are, without darkening the circles, the machine will never check the said OMR answer sheet. In the facts of the present case, fatal error has been committed by this candidate, hence his

case is entirely different from the case of Sushma Kumari.

(X) Learned counsel has argued two more points irregularity committed by JAC and the students are tolerating their mistake and, therefore, the institutions should also tolerate the mistakes of candidates and second is about malpractices and corrupt practices of JAC. It appears that this argument has been canvassed out of frustration. As he is prospective candidate of the post of teacher, we are not imposing cost upon him for this absurd argument. Suffice it to say that these are baseless arguments devoid of any merit having no bearing upon the examination of blank OMR answer sheet of this appellant.

(XI) Counsel for the appellant contended about a public notice which should be given to those candidates who have committed errors on OMR answer sheet like CBSE. This is also an argument devoid of any merit, because it has no relevance with the procedure and methodology adopted by the JAC. Even if this type of public notice is given to those appellant that he has left all the circles blank upon OMR answer sheet, it makes no difference at all because of this type of public notice this appellant can not be given second chance to darken those circles. In examination once answer is given it is go-went-gone. There cannot be a second time answers given by the candidates for the very same questions.

(XII) Counsel has also relied upon the decision rendered by the Allahabad High Court as stated hereinabove. We are respectfully in disagreement with the same for the reasons we have mentioned hereinabove. Court cannot change the methodology of taking examination, by State Public Service Commission.

5. As a cumulative effects of the aforesaid facts and reasons stated hereinabove, no error has been committed by the learned Single Judge in rejecting the W.P. (C.) No. 2126 of 2014 preferred by this appellant.

6. There is no substance in this L.P.A. Hence, it is hereby dismissed.